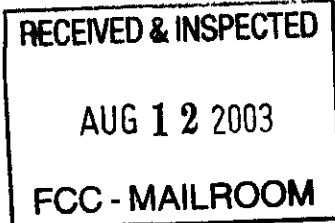




ANGUS S. KING, JR.
GOVERNOR

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MAINE HISTORIC PRESERVATION COMMISSION
55 CAPITOL STREET
65 STATE HOUSE STATION
AUGUSTA, MAINE
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EARLE G. SHETTLEWORTH, JR.
DIRECTOR

August 7, 2003

Vistrionix, Inc.
Att: Federal Communications Commission Secretary
236 Massachusetts Avenue, NE, Suite 110
Washington, DC 20002

RE: Docket No. 03-128 - Proposed Programmatic Agreement (FCC, ACHP, & NCSHPO)

It is the opinion of the Maine Historic Preservation Commission that the June 9, 2003 draft (FCC 03-125) is inadequate to meet the intent of Section 106 of the National Historic Preservation Act of 1966, as amended. Several undertakings proposed for exclusion from Section 106 review are not defined to an extent to determine their potential for impacts to historic properties, while others have proposed APEs that, under many circumstances, could prove insufficient to protect such properties from adverse effects.

Specifically, on page A-8, we have several questions related to section III.A.3:

- 1) Do these practices have the potential to damage historic buildings or other structures?
- 2) Could any of the practices discussed in subsections a, c, and e involve excavation?
- 3) Exactly what activities are covered under subsection e?
- 4) What does "temporary" mean "in the case of those Facilities associated with national security.".

Additionally, we would like to have an explanation as to how the APEs proposed in the draft programmatic agreement were determined to be sufficient to protect historic resources. As the working group is certainly aware, there are a number of variables involved in cell tower reviews, especially when determining the effects of such projects upon historic resources. We are particularly concerned about sections III.A.4 & 5, which essentially allows 200-400' high, brightly painted and lighted towers to be constructed 201' (or more) from National Register listed and eligible properties and historic districts with no prior review or notification. We also feel that the 3/4 and 1 1/2 mile APEs proposed under sections VI.B.2.a.2) & 3) respectively, may not be sufficient for all lighted towers that are over 200' high and that such APEs should be determined on a project-by-project basis. In general, we do not accept the forgone conclusion that these undertakings have no potential to effect historic resources that lie within the proposed APEs.

Both of the assumptions made with regard to archaeological resources under section VI.C.4 are unacceptable. (1) National Register eligible archaeological sites can exist beneath two feet of disturbed soils and (2) a six inch buffer is not enough to protect a potentially intact



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archaeological site. Part (2) also assumes extremely accurate (within six inches) records of previous soil disturbance, which could only be corroborated through excavation. Section VI.C.4 should be removed entirely.

We also take exception to the procedure proposed under section VII.4 of "immediately" returning application packets to applicants with "a description of any deficiencies.". Due to the sheer volume of Section 106 reviews and a small staff due to budget restrictions, it is not possible to immediately respond to applicants. Requesting additional information from applicants is fairly common for all types of 106 reviews and this section would, in essence, give cell tower applicants precedence over all other applicants. Therefore, "immediately return" should be changed to "returned within thirty days".

Also, pursuant to 36 CFR 800.11 it is incumbent upon the agency official (or applicant) to provide adequate documentation to 1) support any conclusions made with regard to properties' NR eligibility and 2) support a determination of effects on properties that are determined to be eligible. When we have had to request additional information subsequent to completed architectural surveys, it has generally been because the surveys were conducted by individuals with limited understanding of cultural resources and Section 106, did not make any determinations with regard to individual property eligibility, did not provide adequate documentation for us to make such determinations, and/or did not provide adequate documentation for us to concur with their determinations of effects. It has been our experience that this is, by far, the most common reason for delays in cell tower reviews. Therefore, rather than bypassing the Section 106 process through broad and confusing redefined APEs and exclusions, the process would be better served, as well as expedited, if the FCC and cell tower applicants were more diligent in fulfilling their basic responsibilities as defined by the National Historic Preservation Act. Thorough completion of the sample forms in attachments 3 & 4 would adequately address this issue.

Please contact Mike Johnson of my staff if there are any questions regarding these comments.

Sincerely,

Earle G. Shettleworth, Jr.
State Historic Preservation Officer

EGS/mj